

IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

KENT FRIZZELL, *et al.*, Petitioners,

v.

SIERRA CLUB, *et al.*, Respondents.

AMERICAN ELECTRIC POWER SYSTEM, *et al.*, Petitioners,

v.

SIERRA CLUB, *et al.*, Respondents.

On Petitions for Writs of Certiorari to the United States Court
of Appeals for the District of Columbia Circuit

**BRIEF OF THE CARTER OIL COMPANY
AS AMICUS CURIAE IN SUPPORT OF THE
PETITIONS FOR WRITS OF CERTIORARI**

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THE INTEREST OF THE AMICUS CURIAE

The Carter Oil Company ("Carter"), having obtained consent from each party, submits this brief as *amicus curiae* in support of the Petitions for Writs of

Certiorari.¹ The basic facts underlying Carter's interest in this litigation are as follows.

During the last eight years Carter has been working assiduously toward the development of a major coal-mining enterprise in the so-called Eastern Powder River Coal Basin of Wyoming. During that eight-year period the principal events have been as follows: (1) In 1967 the United States Department of the Interior held a competitive lease sale covering some 5,400 acres in Wyoming, and the high bid of over \$900,000 was submitted on Carter's behalf to obtain the lease (Federal Coal Lease W-5036); (2) Carter has either purchased or obtained options to purchase all surface land overlying the lease (except for approximately 40 acres that is public domain land); (3) Carter developed and submitted to the Department of the Interior in April 1973 a plan for the mining of the coal resources of the lease and for the reclamation of the lands subsequent to mining, and the Secretary of the Interior has indicated his readiness to approve Carter's plan; (4) as to the environmental consequences of the Carter mining and reclamation plan the Department of the Interior has prepared a 173-page environmental impact statement (which appears as Part IV of the Final Environmental Impact Statement for the Development of Coal Resources in the Eastern Powder River Coal Basin of Wyoming (pages IV-1 through IV-173), issued October 18, 1974); (5) Carter has signed a 30-year sales contract with a major electrical utility company, under which Carter is called upon to deliver five million tons of low-sulphur coal per year, with deliveries sched-

¹ Copies of Carter's requests for the consent of each party to the filing of this brief, and the affirmative replies thereto, have been filed with the Clerk of this Court.

uled to begin in mid-1976; (6) in aid of its proposed mining operations Carter has commenced extensive construction of off-lease surface facilities for site preparation costing, through July 31, 1975, approximately \$8,200,000; (7) through July 31, 1975, Carter's total expenditures in furtherance of the proposed operation have amounted to approximately \$12,800,000; and (8) Carter is contractually committed to expenditures of approximately \$11,200,000 including equipment ordered for this lease in the coming two years.

The entire project, however, has been brought to a halt by the injunction entered by the Court of Appeals below. Although the Secretary of the Interior has indicated his readiness to approve Carter's plan and Carter is now ready to commence mining on its lease, the Court of Appeals' injunction has precluded the Secretary from acting on Carter's proposed mining and reclamation plan. The injunction therefore has totally disrupted Carter's project at a very substantial cost, both in terms of money and in terms of relations with equipment suppliers, employees, customers, and ultimate consumers of electrical energy.

ARGUMENT

Carter adopts the arguments of the Federal petitioners and the intervenors in support of their petitions for certiorari.

The drastic consequences of the decision of the Court of Appeals below are cogently illustrated by the dilemma in which Carter now finds itself. The Federal official who bears the responsibility for the preparation of environmental impact statements with respect to Federal coal leases (*i.e.*, the Secretary of the Interior) has decided, in his discretion, that the proper

way to analyze the environmental impact of a number of proposed projects in the Eastern Powder River Coal Basin is to prepare a single statement covering all pending mining plans and related applications centering in that area. Having made that discretionary determination, the Secretary has in fact prepared such a comprehensive Environmental Impact Statement, and in it he has devoted no less than 173 pages of discussion to the specific mining and reclamation plan proposed by Carter. Most significantly, it has never been claimed, either in this lawsuit or in any other, that the foregoing Environmental Impact Statement fails to comply with NEPA or any other law. *Prima facie*, therefore, it would seem that the Secretary of the Interior should now be free to approve Carter's mining and reclamation plan and that Carter itself should be free to move forward with the project in aid of the country's urgent need for additional sources of energy.

The Court of Appeals, however, has acted squarely to the contrary. Although the Sierra Club concedes that the Federal petitioners have never made any "proposal" for region-wide development of the four-state Northern Great Plains Area, the Sierra Club nevertheless thinks that that should have been done, and on that basis the Court of Appeals has, in effect, enjoined the entire Carter mining and reclamation project—despite the fact that there exists today an unchallenged Environmental Impact Statement on that exact project.

The erroneous application of NEPA by the Court of Appeals, taken together with its far-reaching impact on the energy resources of the country, warrants the granting of the petitions for certiorari.

CONCLUSION

Carter, as *amicus curiae*, urges that the Petitions for Writs of Certiorari be granted.

Respectfully submitted,

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